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CHAPTER I

BEFORE THE CONQUEST

That slavery existed in Canada before its conquest by Britain in 1759-60, there can be no doubt, although curiously enough it has been denied by some historians and essayists.¹ The first Negro slave of which any account is given was brought to Quebec by the English in 1628. He was a young man from Madagascar and was sold in Quebec for 50 half crowns.² Sixty years thereafter in 1688, Denonville, the Governor and DeChampigny, the Intendant of New France, wrote to the French Secretary of State, complaining of the dearth and scarcity of labor, agricultural and domestic, and suggesting that the best remedy would be to have Negro slaves. If His Majesty would agree to that course, some of the principal inhabitants

¹ For example in Garneau's *Histoire du Canada* (1st Edit) Vol. 2, p. 447 after speaking of correspondence of 1688-9 referred to in the text he says of the answer of the authorities in Paris:

"C'était assez pour faire échouer une entreprise, qui aurait greffé sur notre société la grande et terrible plaie qui paralyse la force d'une portion si considérable de l'Union Américaine, l'esclavage, cette plaie inconnue sous notre ciel du Nord"—"That was effective to strand a scheme which would have engrafted upon our society that great and terrible plague which paralyses the energies of so considerable a part of the American Union, Slavery, that plague unknown under our northern sky."

² He was sold by David Kertk or Kirke the first English Conqueror of Quebec. England held her conquest only from 1629 to 1632, if it be permissible to call Kirke's possession that of England when he was repudiated by his country.

Relations des Jesuites, 1632, p. 12: do. do. 1633, p. 25. Much of the information which follows concerning slavery in Quebec is taken from a paper in the *Memoirs of the Historical Society of Montreal*, 1859, *De L'esclavage en Canada*, written by M. Jacques Viger and Sir L. H. Lafontaine. I have made an independent investigation and am satisfied that the facts are truly stated. This general acknowledgment will prevent the necessity of particular reference.

In a local history of Montreal *Memoirs de la Société Historique de Montreal* 1869, p. 200, there is a reference to Panis slaves in Montreal in 1670.

would have some bought in the West Indies on the arrival of the Guinea ships. The minister replied in 1689 in a note giving the King's consent but drawing attention to the danger of the slaves coming from so different a climate dying in Canada and thereby rendering the experiment of no avail.³

The Indians were accustomed to make use of slaves, generally if not universally of those belonging to other tribes: and the French Canadians frequently bought Indian slaves from the aborigines. These were called "Panis."⁴ It would seem that a very few Indians were directly enslaved by the inhabitants: but the chief means of acquiring Panis was purchase from *les sauvages*.

The property in slaves was well recognized in International Law. We find that in the Treaty of Peace and Neutrality in America signed at London, November 16, 1686,⁵ between the Kings of France and England, which James II had arranged shortly after attaining the throne,

"Mais il est bon de leur faire remarquer qu'il est à craindre que ces nègres, venant d'un climat si différent, ne périssent en Canada et le projet serait alors inutile." "Il est à craindre" that the prospect of "le projet" being "inutile" was more alarming than that of "ces nègres" perishing in frozen Canada.

⁴The name Pani or Panis, Anglicized into Pawnee, was used generally in Canada as synonymous with "Indian Slave" because these slaves were usually taken from the Pawnee tribe. It is held by some that the Panis were a tribe wholly distinct from the tribe known among the English as Pawnees—*e.g.*, Drake's *History of the Indians of North America*. Those who would further pursue this matter will find material in the *Wisconsin Historical Collections*, Vol. XVIII, p. 103 (note); Viger and Lafontaine, *L'Esclavage en Canada* cited above n. 2; *Michigan Pioneer and Historical Collections*, Vol. XXVII, p. 613 (n); Vol. XXX, pp. 402, 596; Vol. XXXV, p. 548; Vol. XXXVII, p. 541. From Vol. XXX, p. 546, we learn that Dr. Anthon, father of Prof. Anthon of Classical Text-book fame, had a "Panie Wench" who, when the family had the smallpox "had them very severe" along with Dr. Anthon's little girl and his "eldest boy"—"however they got all safe over it and are not disfigured." Thwaites, an exceedingly careful writer, in his edition of *Long's Travels*, Cleveland, 1904, says in a note on page 117; "Indian Slavery among the French was first practised in the Illinois Country." He gives no authority and I know of none.

⁵Referred to in Chalmers' *Collection of Treaties between Great Britain and Other Powers*, London, 1790, p. 328: Pap. Off. B. 25.

Article 10 provides that the subjects of neither nation should take away the savage inhabitants, or their slaves or the goods which the savages had taken belonging to the subjects of either nation, and that they should give no assistance or protection to such raids and pillage. In 1705 it was decided that Negroes in America were "moveables," meubles, corresponding in substance to what is called "personal property" in the English law.⁶ This decision was on the *Coutume de Paris*, the law of New France.

The Panis and Negro slaves were not always obedient. Jacques Raudot, the Intendant, April 13, 1709, made an ordinance on "the Subject of Negroes and Savages called Panis." In this he recited the advantage the colony would acquire by certainty of ownership of the savages called Panis "whose nation is far removed from this country" and that certainty could only be brought about through the Indians who capture them in their homes and deal for the most part with the English of Carolina, but who sometimes in fact sell them to the Canadians who are often defrauded of considerable sums through an idea of liberty inspired in the Panis by those who do not buy,⁷ so that almost daily they leave their masters under the pretext that there are no slaves in France—that is not wholly true since in the islands of this Continent all the Negroes bought as such are regarded as slaves."

The further recital says that all the colonies should be on the same footing, and that the Panis were as necessary for the Canadians for the cultivation of the land and other work as the Negroes were for the islands, that it was necessary to assure the property in their purchases those who have bought and those who should buy in the future. Then comes the enactment "Nous sous le bon plaisir de Sa

⁶ We shall see later in this work that by the English law, the "villein" was real property and in the same case as land: also that when Parliament came to legislate so as to make lands in the American Colonies liable for debts, "Negroes" were included in "hereditaments" and therefore "real estate."

⁷ Thus early do we find the Abolitionist getting in his fiendish work—the enemy of society, of God and man!

Majesté ordonnons, que tous les Panis et Nègres qui ont été achetés et qui le seront dans la suite, appartiendront en pleine propriété à ceux qui les ont achetés comme étant leurs esclaves." "We with the consent of His Majesty enact that all the Panis and Negroes who heretofore have been or who hereafter shall be bought shall be the absolute property as their slaves of those who bought them."⁸

This ordinance was not a dead letter. On February 8, 1734, Gilles Hocquart, the Intendant at Quebec issued an ordinance in which he recited that in 1732 Captain Joanne of the Navy brought a Carib slave of his to Canada and employed him as a sailor; that he had deserted when Captain Joanne was ready to embark for the West Indies; and that the master had seen and recognized him a short time theretofore in the Parish of St. Augustine but on reclaiming him certain evil-disposed persons had facilitated his escape. The ordinance directed all captains and officers of the militia to give their assistance to the master in recovering the Carib slave and forbade all persons to conceal him or facilitate his escape on pain of fine or worse.⁹

Slavery thereafter tended to expand. The Edict of October 1727 concerning the American islands and colonies and therefore including Canada in the preamble spoke of the islands and colonies being in a condition to support a considerable navigation and commerce by the consumption and trade of Negroes, goods and merchandise, and the measures taken to furnish the necessary Negroes, goods

⁸ This ordinance is quoted (*Mich. Hist. Coll.*, XII, p. 511, 517) and its language ascribed to a (non-existent) "wise and humane statute of Upper Canada of May 31, 1798"—a curious mistake, perhaps in copying or printing.

In Kingsford's *History of Canada*, Vol. 2, p. 507, we are told: "In 1718, several young men were prosecuted on account of their relations with Albany carried on through Lake Champlain. One of them, M. de la Découverte, had made himself remarkable by bringing back a Negro slave and some silver ware. One of the New York Livingstones resided in Montreal and was generally the intermediary in these transactions. The author adds in a note: "This negro must have been among the first brought to Canada."

⁹ "A peine d'amende arbitraire et de plus grande peine si le cas y escheoit."

and merchandise. It was decreed that only such Negroes, goods, and merchandise should be received by the islands and colonies as should be brought in French bottoms. Very explicit and rigid regulations were made to that end.

Some of these slaves were too vindictive to be good servants. There is given by Abbé Gosselin in a paper in the *Transactions, Royal Society of Canada for 1900*, an account of a mutiny of part of the garrison at Niagara incited by a Panis probably in the service of an officer at the post. Some of the mutineers were sentenced to death but made their escape while the Panis, Charles, was sent to Martinique with a request to the authorities to make him a slave and to take every precaution that he should not escape to Canada or even to the English colonies. A female slave of color belonging to Mme. de Francheville who had been bought in the English Colonies set fire to her mistress' home the night of the 10-11 April 1734, thus causing a conflagration which destroyed a part of the city of Montreal. The unfortunate slave was apprehended and tried for the crime then and for long after a capital felony. Being found guilty, she was hanged June, 1734.

The increase in the number of slaves made necessary some regulation concerning their liberation. September 1, 1736, Gilles Hocquart, the Intendant already mentioned, made an ordinance concerning the formalities requisite in the enfranchisement of slaves. Reciting that he had been informed that certain persons in Canada had freed their slaves without any other formality than verbally giving them their liberty, and the necessity of fixing in an invariable manner the status of slaves who should be enfranchised, he ordered that for the future all enfranchisements should be by notarial act and that all other attempted enfranchisements should be null and void.

Slaves unable to secure their freedom by legal means, however, undertook sometimes to effect the same by flight. A royal decree of July 23, 1745, recited the escape of three male and one female Negro slaves from the English West

India Island of Antigua to the French Island of Guadeloupe and there sold. There followed a decision of the Superior Council of Guadeloupe that the proceeds of the sale belonged to the King of France and Negro slaves belonging to the enemy when they came into a French colony became at once the property of His Majesty. To make clear the course to pursue for the future, the decree declared that Negro slaves who escape from enemy colonies into French colonies and all they bring with them belong to His Majesty alone in the same way as enemy ships and goods wrecked on his coasts.

With all of this security the ownership of slaves became common. In the Registers of the Parish of La Longue Pointe is found the certificate of the burial, March 13, 1755, of the body of Louise, a female Negro slave, aged 27 days, the property of M. Deschambault. In the same Parish is found the certificate of baptism of Marie Judith, a Panis, about 12 years of age belonging to Sieur Preville of the same Parish, November 4, 1756. On January 22, 1757, one Constant a Panis slave of Sieur de Saint Blain, officer of Infantry, is sentenced by de Monrepos, Lieutenant-Governor civil and criminal in the Jurisdiction of Montreal,¹⁰ to the pillory in a public place on a market day and then to perpetual banishment from the jurisdiction.

The conquest of Canada begun at Quebec in 1759 and completed by the surrender to Amherst of Montreal by de Vaudreuil in 1760 had some bearing on slavery. One of the Articles of Capitulation, the 47th, provided that "the Negroes and Panis of both Sexes shall remain in the possession of the French and Canadians to whom they belong; they shall be at liberty to keep them in their service in the Colony or to sell them: and they may also continue to bring them up in the Roman religion."¹¹

¹⁰ Canada was at this time divided into three Jurisdictions or Districts—those of Quebec, Trois Rivières and Montreal.

¹¹ There are trifling variations in the English text in the several versions in the *Capitulations and Extracts of Treaties relating to Canada, 1797*; *Knox's Journal*, Vol. 2, p. 423: *Documents relative to the Colonial History of*

Having now reached the end of the French period, it will be well to say a word as to the rights of the slaves. There is nowhere any intimation that there was any difference in that regard between the Negro and the Panis. The treatment of the latter by their fellow Indians depended upon the individual master. The Panis had no rights which his Indian master was bound to respect. Remembering the persistence of customs among uncivilized peoples, one may conclude that the description given of slavery among the Chinook Indians about a century later will probably not be far from the mark concerning the Indians of the earlier time and their slaves.

Paul Kane, the celebrated explorer and artist,¹² in a paper read before the Canadian Institute¹³ in 1857 said: "Slavery is carried on to a great extent along the North-

the State of New York, Vol. 10, p. 1107. That in the text is from Shortt & Doughty's *Constitutional Documents 1759-1791, Canadian Archives Publication*, Ottawa, 1907. There is no substantial difference in terminology and none at all in meaning. I give the French version, as to which there is no dispute: "Les Nègres et panis des deux Sexes resteront En leur qualité d'Esclaves, en la possession des françois et Canadiens à qui Ils apartiennent; Il leur Sera libre de les garder à leur Service dans la Colonie od de les vendre, Et Ils pourront aussi Continuer à les faire Elever dans la Religion Romaine."

¹² The Province of Ontario is the proud possessor of many of Paul Kane's sketches.

¹³ Now the Royal Canadian Institute. The paper appears in Series II of the *Transactions*, Vol. 2, p. 20 (1857).

The use by the Indians of Slaves is noted very early: for example in Galinée's *Narrative* of the extraordinary voyage of LaSalle and others in 1669-70 the travellers are shown to have obtained from the Indians, slaves as guides. See pp. 21, 27, 43 of Coyne's edition, 4 *Ont. Hist. Soc. Papers* (1903). These Indians were accustomed to take their slaves to the Dutch. *Ibid.*, p. 27.

Still there is not very much in the old authors about slavery among the Indians: the references are incidental and fragmentary and the institution is taken for granted. Thus in Lescarbot's *History of New France*, published in 1609, the only reference which I recall is on pp. 270, 449 of The Champlain Society's edition, Toronto, 1914; speaking of the Micmacs the author says: "... the conquerors keep the women and children prisoners ... herein they retain more humanity than is sometimes shown by Christians. For in any case, one should be satisfied to make them slaves as do our savages or to make them purchase their liberty."

West Coast and in Vancouver Island and the Chinooks. . . . The inhabitants still retain a large number of slaves. These are usually procured from the Chastay Tribe who live near the Umqua, a river south of the Columbia emptying into the Pacific. They are sometimes seized by war-parties but are often bought from their own people. . . . Their slavery is of the most abject description: the Chinook men and women treat them with great severity and exercise the power of life and death at pleasure."

Kane gives shocking instances of this. He tells of a chief who sacrificed five slaves to a colossal wooden idol he had set up and says that the unfortunate slaves were not considered entitled even to burial but their bodies were cast out to the crows and vultures.

Amongst the French such an extreme of barbarity did not obtain. Their law was based upon the civil law, that is, the law of Rome, which in its developed form recognized the slave as a human being. The Roman world was full of slaves. Not only were there slaves born but debtors sometimes sold themselves¹⁴ or their children. The criminal might be enslaved. In early pagan times the slave had no rights. He was a chattel disposable according to the will of his master who had *jus vitæ necisque*, who could slay, mutilate, scourge at pleasure.¹⁵ In the course of time

¹⁴ It will be remembered that the ancient law of Rome, the Twelve Tables, authorized creditors to take an insolvent debtor, kill him and divide his body amongst them, a real execution against the person more trenchant if not more effective than the *capias ad satisfaciendum* dear to the English lawyer.

¹⁵ Everyone has shuddered at the awful picture drawn by Juvenal in his Sixth Satire of the fashionable Roman dame who had eight husbands in five years and who ordered her slave to immediate crucifixion. When her husband mildly ventured to suggest that there should at least be some evidence of guilt and that no time should be considered long where the life of a man is in question he was snubbed, just as the Roman lady who was expostulated with for taking her bath in the presence of man slaves asked "*An servus homo?*" The horrible but pithy dialogue reads:

"Pone crucem servo." "Meruit quo crimine servus
Supplicium? Quis testis adest? Quis detulit? Audi
Nulla umquam de morte hominis cunctatio longa est"
"O demens, ita servus homo est? Nil fecerit, esto
Hoc volo, sic jubeo, sit pro ratione voluntas."

—Juvenal, *Sat.*, VI, ll. 219-223.

this extreme power was restrained. Hadrian forbade the killing of slaves, Marius allowed the slave to lay an information against his master. The prefect at Rome and the presidents of the provinces took cognizance of crimes against the slave: and Constantine allowed a master to go free on killing his slave in chastisement only if he used rods or whips, but not if he used sticks, stones or javelins or tortured him to death.¹⁶ Hard as was his lot, the unhappy

"The cross for the slave!" "What is the charge? What is the evidence? Who laid the information? Hear what he has to say—No delay is ever great where the death of a man is in question." "You driveller! So a slave is a man! Have it your own way—he did nothing. I wish it, that is my order, my wish is a good enough reason."

The natural death for a Roman slave was on the cross or under the scourge.

¹⁶ Constantine also by his Constitution No. 319 provided for slaves becoming free: the Constitution referred to in the text is No. 326. The best short account of slave legislation in Rome which I have seen is in a paper read by the late Vice Chancellor Proudfoot of the Ontario Court of Chancery, February 7, 1891, before the Canadian Institute. *Trans. Can. Ins.*, Series IV, Vol. 2, p. 173. Many of the judgments of Vice Chancellor Proudfoot (venerabile nomen) show a profound knowledge and appreciation of the Civil Law.

The following is taken from Prof. Sherman's great work *Roman Law in the Modern World*, Boston, 1917. The learned author has laid philosophical lawyers of all countries under heavy obligations by this splendid book, as noted for its lucidity as for its learning.

Vol. 1, 69. "To inflict unnatural cruelty upon—and finally to kill—a slave was prohibited by Augustus Claudius and Antoninus Pius. Moreover, because by natural law all men were born free and equal (see Digest, 50, 17, 32) the Emperor often restored to slaves the status of a freeborn person."

I, 146. "Constantine . . . abolished crucifixion as a punishment; encouraged the emancipation of slaves. . . ."

I, 150. ". . . It is regrettable that Christianity did not change other parts of the Roman law of persons which ought to have been reformed. The chief example of this failure is slavery, which the law of Justinian fully recognized. The inertia of past centuries as to slavery was too great to be overcome. St. Paul's attitude towards slavery was to recognize the *status quo*, and he did not counsel wholesale emancipation. But Christianity continued the progress of the pagan law along the lines of mercy and kindness, e.g., to poison a slave or brand him was treated in later Imperial Roman law as homicide, and manumission was made easier; but the Church did not recognize the marriage of slaves until over 300 years after Justinian's death."

II, 434, "In Roman law . . . the slave was a thing or chattel—nothing more legally. Slaves could no hold property—slaves could not marry, their actual unions were never legally recognized."

slave had at least some rights in the later civil law, few and slight as they were, and these he had under the *Coutume de Paris*, the law of French Canada.

II, 436, "With the advent of Greek culture and Christianity the harsh manners of ancient Rome became greatly altered."

II, 828, "One feature of the *Lex Aquilia* is . . . that it granted an action in damages for the unlawful killing of . . . the slave of another man." *Inst.*, 413, pr; *Gaius* 3, 210.

II. 829, ". . . the owner had his option either of suing the culprit for damages under the *lex Aquilia* or of causing him to be criminally prosecuted." *Inst.*, 4, 3, 11 *Gaius* 3, 213.

II, 935, "A free person called as a witness could not be subjected to torture, but a slave could be tortured."